

# In the Supreme Court of the United States.

OCTOBER TERM, 1923.

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UNITED STATES OF AMERICA, PETITIONER,	} No. —.
v.	
JAMES J. JOHNSTON, RESPONDENT.	

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit rendered in the above-entitled case on April 9, 1923, reversing a conviction in the District Court.

### STATEMENT.

The respondent, James J. Johnston, was indicted in the United States District Court for the Southern District of New York and charged with violations of Sections 800, 802, and 1308 of the Revenue Law known as the Revenue Act of 1918, and with embezzlement of Government money.

After trial and conviction in the District Court the case was taken to the Circuit Court of Appeals

for the Second Circuit on writ of error, in which court the judgment of the court below was reversed.

Petitioner now seeks a writ of certiorari to review the decision of the Circuit Court of Appeals reversing the conviction in the District Court.

#### QUESTIONS INVOLVED.

1. Whether a corporation, because it holds a state license, is alone answerable for the payment of taxes on admissions to exhibitions, even though the liability of the corporation defeats the plain purpose of Congress to require the person receiving payment for admissions to collect the taxes and account for and pay them over to the Government.

2. Whether the tax moneys become the property of the United States the instant they are paid by the spectators to the persons in charge of admissions to exhibitions.

3. Whether the court erred in holding that the statements contained in the Internal Revenue bulletin constitute a regulation of the Treasury Department and have the force and effect of law.

#### FACTS.

The respondent entered into a contract with the Central Manhattan Boxing Club (Inc.) to act as its "agent, match-maker, and manager" for a period of one year. The Central Manhattan Boxing Club (Inc.) was incorporated under the laws of the State of New York and secured a license from the New York State Boxing Commission to conduct boxing

exhibitions at its clubhouse. The contract in part provided that the respondent was to receive the entire proceeds from each boxing exhibition and the exclusive right to conduct such exhibitions in this clubhouse. For this privilege the respondent agreed to pay a certain stipulated amount for each exhibition staged by him. He also guaranteed the presentation of one boxing exhibition per month and agreed to pay the State tax of five per cent and the Federal tax of ten per cent.

In furtherance of this agreement boxing exhibitions or contests were held in the name of the Central Manhattan Boxing Club (Inc.) during the months of February, March, April, and May, 1921. It is for the alleged failure of the respondent to account for and pay the Federal taxes on admissions to said exhibitions that the indictment was returned. It was contended by the respondent, in the Circuit Court of Appeals, that under the law of New York only a corporation could be licensed to conduct boxing contests, and that therefore, within the purview of the New York statute, he was not the conductor of contests nor the collector of money.

#### REASONS FOR GRANTING THE PETITION.

First, the decision of the Circuit Court of Appeals is detrimental to the interests of the Government in the collection of revenue under the Revenue Law of 1918, as it opens the door to fraudulent transactions.

Second, the question is of grave importance to the administration of the Internal Revenue laws which this decision leaves in confusion.

Third, the Circuit Court of Appeals erred in holding that the corporation, because it held a state license, was alone answerable for the taxes on admissions, as it defeats the plain purpose of Congress to require persons receiving payment for admissions to collect the taxes and to account for and pay them over to the Government.

JAMES M. BECK, *Solicitor General*.

MABEL WALKER WILLEBRANDT,  
*Assistant Atty. General.*

## BRIEF IN SUPPORT OF THE PETITION.

1. The Circuit Court of Appeals erred in holding that the corporation, because it held a State license, was alone answerable for the taxes on admissions, as such holding defeats the plain purpose of Congress to require persons receiving payment for admissions to collect the taxes and to account for and pay them over to the Government.

The New York State law provides that only a corporation can be licensed to conduct boxing contests. Respondent caused the organization of the Central Manhattan Boxing Club (Inc.), paid the incorporation expenses, the State license fee, and the cost of the necessary bond. Respondent then entered into a contract with this corporation for the purpose of conducting boxing exhibitions, wherein he is referred to as agent, match maker, and manager. Evidence was introduced at the trial to show that this provision in the contract was a mere subterfuge to circumvent the law of the State of New York. Respondent paid a specified rental, conducted the exhibitions, paid the contestants, and at all times exercised complete control over the contest uninfluenced by the corporation. Respondent at no time received remuneration from the Central Manhattan Boxing Club (Inc.) for his services.

It is respectfully contended by the petitioner that the view taken by the court would render the State law paramount to the Revenue Act of 1918 passed by Congress under authority of the Sixteenth Amendment to the Constitution.

The purpose of Congress is plain and unequivocal. The person collecting admission is charged with the statutory duty of collecting the tax in addition. Section 802 incorporates provisions of Section 502 requiring the person collecting the admissions to make monthly returns and pay the taxes so collected to the Collector of Internal Revenue.

The respondent in the instant case, under the decision of the Circuit Court of Appeals, escapes the duty placed upon him of collecting the tax and paying the same and the penalty for failure to make such return, simply because the law of the State of New York makes it impossible for him to conduct boxing exhibitions. A decision of this kind, if allowed to stand, opens the door to fraud and allows criminals to escape punishment for violation of the Federal statute.

2. The tax moneys become the property of the United States the instant they are paid by the spectators to the person in charge of admissions.

Petitioner respectfully contends that the duty to collect the tax from the taxpayer, when performed, renders the money collected the money of the United States. The taxpayer pays this money to the Government by placing it in the hands of the person required by law to collect it and account therefor to the Government. It is apparent that the money collected does not belong in the instant case to either the corporation or the respondent. It is reasonable to believe that this money becomes the property of the United States the instant it is paid

by the spectator. It would follow, therefore, that the conversion of this money by the holder was embezzlement of money of the United States.

3. The Circuit Court of Appeals erred in holding that the statements contained in the Internal Revenue Bulletin constitute a regulation of the Treasury Department and have the force and effect of law.

The petitioner respectfully points out that on the initial page of all Internal Revenue bulletins it is set forth that the rulings contained therein have none of the force or effect of Treasury decisions, and do not commit the Department to any interpretation of the law which has not been formally approved and promulgated by the Secretary of the Treasury. Petitioner contends that the ruling relied upon by the respondent does not commit the Department to such an interpretation of the law.

#### CONCLUSION.

It is respectfully submitted that a writ of certiorari should issue to review the judgment of the Circuit Court of Appeals for the Second Circuit, to the end that it may be reversed.

JAMES M. BECK, *Solicitor General.*

MABEL WALKER WILLEBRANDT,  
*Assistant Attorney General.*

